

ST 96-46

Tax Type: SALES TAX

Issue: Enterprise Zone (Exemption)  
Bearing The Burden for Payment of Tax (Claim Issues)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
SPRINGFIELD, ILLINOIS

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TAXPAYER	)	
	)	
Taxpayer	)	Docket #
	)	IBT #
v.	)	
	)	Claims for Credit
THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	

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RECOMMENDATION FOR DISPOSITION

Appearances:

John Keith, attorney for TAXPAYER

Synopsis:

TAXPAYER (the "Taxpayer") submitted amended sales and use tax returns to the Illinois Department of Revenue (the "Department") for the periods of June, August, September, October, and November of 1993. The returns showed a reduction in the amount of tax liability of \$373,445.00. The assertion of the taxpayer was that the taxes were paid in error due to either an enterprise zone exemption or a manufacturer's machinery and equipment exemption.

The Department tentatively denied the claim finding that it was not definitely established that the tax was paid in error. The taxpayer timely protested. Prior to the hearing, the taxpayer submitted a copy of the check submitted to CORPORATION by the taxpayer in the amount of \$373,445.00. Also prior to the hearing, the taxpayer reduced the amount of the requested claim to \$337,727.75. A hearing was held regarding the manufacturer's machinery and equipment exemption to the Illinois Retailer's Occupation Tax Act regarding the amount in question. The taxpayer established that the equipment at issue was

used in the manufacturing and assembly process. It is therefore recommended the portion of the tentative determination of claim in the amount of \$337,727.75 be rescinded.

Findings of Fact:

1. The *prima facie* case of the Department consisting of the Notice of Department's Tentative Determination of Claim in the amount of \$373,455.00 was established by the admission into evidence of Department's Exhibit No. 2.

2. The taxpayer submitted amended sales and use tax returns for the periods of June, August, September, October, and November of 1993, decreasing the tax liability in the amount of \$373,445.00. The basis of the adjustment was "[T]he remitted taxes collected from CORPORATION, IBT #, the taxes were collected on tangible personal property which was exempt by definition in the Belvidere Boone County enterprise zone." (Dept. Ex. No. 1)

3. The taxpayer withdrew his request for an exemption based upon the enterprise zone exemption. (Tr. p. 8)

4. Additional documentation included in the correspondence asserted by a CORPORATION representative that "[I]n any case the subject machinery and equipment is used in the process of manufacturing or assembling motor vehicles for sale and therefore exempt from the ROT and UT." (Dept. Ex. No. 1)

5. The taxpayer submitted a copy of their check number 1425, made out to CORPORATION, in the amount of \$373,445.00, the amount of the original claim for credit. The copy of the check has "void" written across the front of it. (Dept. Ex. No. 5)

6. The check that was given to CORPORATION did not have the word "void" on the face thereof, nor was the word "void" placed on the check while in the possession of CORPORATION. CORPORATION received the check on or about December 11, 1995, a date that is after the claim for credit was denied. (Dept. Ex. No. 5)

7. The taxpayer had placed the word "void" on the copy of the check at the direction of their attorney so that the copy could not be reproduced for any other purpose. (Dept. Ex. No. 5)

8. The taxpayer reduced the amount of requested refund from \$373,445.00 to \$337,727.75, based upon the fact that various items included in the original claim were not in fact being used in the manufacturing and assembly process. (Dept. Ex. No. 5; Tr. p. 9)

9. The taxpayer made various pieces of equipment for the CORPORATION plant located in Belvidere, Illinois. The CORPORATION plant assembles and manufactures automobiles at the plant, specifically Neons. (Tr. p. 13)

10. Various pieces of equipment are necessary for the manufacturing and assembly of the fascias or the plastic shell of the bumper of the automobiles. (Tr. pp. 13, 33)

11. The taxpayer requested a credit for four injection molding machines, the related injection screws, related equipment for the injection molding process, and the four silos that heat and dehumidify the pellets (or TPO) prior to the manufacturing process. (Dept. Ex. Nos. 1 and 5)

12. The Facility Engineer of CORPORATION explained the function of the injection mold:

What an injection mold is there is a large screw, and this screw takes plastic pellets about probably one millimeter in diameter, and it takes these pellets, and it winds in, man winds them through this heat. The screw becomes a liquid, and the plastic is -- the machine is set up in such a way that the plastic is then pushed into the machine into the mold, I should say, in a liquid form. The mold then cools the plastic; and once it reaches a certain point in the program which is set up based on the amount of cooling that the material needs, it ends up in a finished product, in our case, fascias. (Tr. p. 15)

13. The silos store the thermal plastofelin (TPO) until the pellets can be used in the injection mold process. The silos have dehumidification controls to remove excess moisture from the stored material. (Tr. pp. 16-21)

14. The taxpayer requested a credit for the tax paid for four robots and related equipment. (Dept. Ex. Nos. 1 and 5)

15. The robots are used to remove the molded fascias, weigh them and if the weight is correct, place them on the conveyor belt. (Tr. p. 40)

16. The taxpayer also requested a credit for various computer terminals, printers and related equipment sold to the CORPORATION plant in Belvidere. (Dept. Ex. No. 1)

17. Some of the computers are used to identify faults in the vehicles during the assembly process and to communicate and keep records regarding requirements for each vehicle as it moves along the assembly line. The computer system also relays information regarding the Performance Feedback System. The Performance Feedback System will not allow the shipment of an automobile if it has not passed certain tests. (Tr. pp. 28-33)

18. Other computers are used in the "broadcast system" which relays the options to put on a specific vehicle. (Tr. P. 31)

19. The taxpayer had initially requested an exemption for 657 computer components. That number was reduced to 313 after an inventory was taken as to the actual usage. (Dept. Ex. No. 5; Tr. pp. 35-39.)

#### CONCLUSIONS OF LAW:

The Retailer's Occupation Tax Act imposes a tax on retailers in the State of Illinois pursuant to 35 **ILCS** 120/2, which states:

2. Tax imposed. A tax is imposed upon persons engaged in the business of selling at retail personal property,...

The Illinois Statutes have provisions for exemptions from Retailer's Occupation Tax liability found at 35 **ILCS** 120/2-5. In particular, and at issue herein, is the exemption for manufacturing, machinery and equipment. The statute at 35 **ILCS** 120/2-5 states:

Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act:...

(14) Machinery and equipment that will be used by the purchaser, or a lessee of the purchaser, primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease, whether

the sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether the sale or lease is made apart from or as an incident to the seller's engaging in the service occupation of producing machines, tools, dies, jigs, patterns, gauges, or other similar items of no commercial value on special order for a particular purchaser.

No claim for credit will be allowed unless it is established that the taxpayer bore the burden of the tax. 35 **ILCS** 120/6.

I find herein that the taxpayer has established that it bore the burden of the tax and that the tax was paid on machinery and equipment that qualified for exemption pursuant to 35 **ILCS** 120/2-5(14).

I therefore recommend that a credit memoranda be issued to the taxpayer in the amount of \$337,727.75.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge

October 2, 1996